

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALLIED WORLD SURPLUS LINES
INSURANCE COMPANY F/K/A DARWIN
SELECT INSURANCE COMPANY; AND
ALLIED WORLD SPECIALTY INSURANCE
COMPANY F/K/A DARWIN NATIONAL
ASSURANCE COMPANY,

Plaintiffs,

v.

PREMERA,

Defendant.

PREMERA,

Counterclaim Plaintiff,

v.

ALLIED WORLD SURPLUS LINES
INSURANCE COMPANY F/K/A DARWIN
SELECT INSURANCE COMPANY; AND
ALLIED WORLD SPECIALTY INSURANCE
COMPANY F/K/A DARWIN NATIONAL
ASSURANCE COMPANY; LEXINGTON
INSURANCE COMPANY; BCS INSURANCE
COMPANY; HOMELAND INSURANCE
COMPANY OF NEW YORK; IRONSHORE
SPECIALTY INSURANCE COMPANY; RLI
INSURANCE COMPANY; TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA; AND RSUI INDEMNITY
COMPANY

Counterclaim Defendants

NO. 2:17-cv-00714 RSL

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order ("Order"). The parties acknowledge that this Order is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL MATERIAL"

"Confidential Material" shall include the following documents and tangible things produced or otherwise exchanged: trade secrets, business strategies and techniques, business policies and practices, financial information, results or projections, pricing proposals, contractual arrangements, arrangements with employees, proposed products, other business plans, confidential research, development or commercial information, or material that is otherwise considered confidential under applicable law in the parties' files. Confidential Material may also include documents and tangible things, whether handwritten or mechanically prepared in paper documents, microfilms, microfiche, computer tapes, computer disks (hard disks, floppy disks and CD ROM disks), computer printouts, or any other computer storage facility or system, audio or video tapes, produced or otherwise exchanged, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, briefs and summaries of confidential information or documents that quote, summarize, or contain material entitled to protection.

3. SCOPE

The protections conferred by this Order cover not only Confidential Material (as defined above) produced by the Parties or non-parties in this action, but also: (1) any information copied or extracted from Confidential Material; (2) all copies, excerpts, summaries, or compilations of

1 Confidential Material; and (3) any testimony, conversations, or presentations by parties or their
2 counsel that might reveal Confidential Material. However, the protections conferred by this
3 Order do not cover information that is in the public domain or becomes part of the public domain
4 through trial or otherwise.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use Confidential Material that is
7 disclosed or produced by another party or by a non-party in connection with this case only for
8 prosecuting, defending, or attempting to settle this litigation. Confidential Material may be
9 disclosed only to the categories of persons and under the conditions described in this Order.
10 Confidential Material must be stored and maintained by a receiving party at a location and in a
11 secure manner that ensures that access is limited to the persons authorized under this Order.

12 4.2 Disclosure of "Confidential Material." Unless otherwise ordered by the Court or
13 permitted in writing by the designating party, a receiving party may disclose Confidential
14 Material only to:

15 (a) the receiving party's counsel of record in this action, as well as employees
16 (including support staff) and agents of counsel to whom it is reasonably necessary to disclose the
17 Confidential Material for this litigation and who have been advised of their obligations
18 hereunder;

19 (b) the officers, directors, employees and agents (including in house counsel)
20 of the receiving party to whom disclosure is reasonably necessary for this litigation and who
21 have been advised of their obligations hereunder;

22 (c) experts and consultants to whom disclosure is reasonably necessary for
23 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
24 ("Acknowledgment") (Exhibit A);

25 (d) the court, court personnel, and court reporters and their staff;

26 (e) the mediators and their personnel;

1 (f) an officer before whom a deposition is taken, including stenographic
2 reporters and any necessary secretarial, clerical or other personnel of such officer;

3 (g) ediscovery vendors, litigation support vendors, copy services or any other
4 vendor engaged in the copying, production, processing or loading of Confidential Information at
5 any party's request, provided each such vendor executes the Acknowledgement (Exhibit A);

6 (h) deposition witnesses provided each such person shall execute the
7 Acknowledgement (Exhibit A). Pages of transcribed deposition testimony or exhibits to
8 depositions that reveal Confidential Material must be separately bound by the court reporter and
9 may not be disclosed to anyone except as permitted under this Order;

10 (i) author(s) and recipient(s) of a document containing Confidential Material,
11 who authored or received the document prior to its production in this action, or persons who
12 have prior knowledge of the document, participated in the events described or contained in the
13 document, or in whose files the document was found;

14 (j) any other person agreed to by the parties;

15 (k) any other person as required by law, regulation, the rules of any
16 government agency or the order of a court of competent jurisdiction; and

17 (l) persons or entities to whom a party has a contractual, legal or regulatory
18 obligation to provide Confidential Material, including insurers, reinsurers, reinsurance
19 intermediaries, retrocessionaires, regulators, retrocessionary accountants, and internal or external
20 auditors or any party.

21 4.3 Filing Confidential Material. Before filing Confidential Material or discussing or
22 referencing such material in court filings, the filing party shall confer with the designating party
23 to determine whether the designating party will remove the confidential designation, whether the
24 document can be redacted, or whether a motion to seal or stipulation and proposed order is
25 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
26 standards that will be applied when a party seeks permission from the court to file material under
27 seal.

1 5. DESIGNATING CONFIDENTIAL MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Confidential Material. Each party
3 or non-party that designates information or items as Confidential Material under this Order must
4 take care to limit any such designation to specific material that qualifies under the applicable
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
9 designations are prohibited. Designations that are shown to be clearly unjustified or that have
10 been made for an improper purpose (e.g., to unnecessarily encumber or delay the case
11 development process or to impose unnecessary expenses and burdens on other parties) expose
12 the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated
14 for protection do not qualify as Confidential Material, the designating party must promptly notify
15 all other parties that it is withdrawing the designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,
17 or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for
18 protection under this Order must be clearly so designated before or when the material is
19 disclosed or produced.

20 (a) Information in documentary form (e.g., paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
22 proceedings): the designating party must affix the word "CONFIDENTIAL" to each page that
23 contains Confidential Material or the filename (if the document is in native form). If only a
24 portion or portions of the material on a page qualifies for protection, the producing party also
25 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
26 margins).

(b) Testimony given in deposition or in other pretrial proceedings: If counsel for any party or non-party does not identify on the record during the deposition or other pretrial proceeding all protected testimony and/or exhibits as Confidential Material, counsel for any party or non-party may designate such material within fifteen (15) business days of receipt of the transcript of the deposition or pretrial proceeding. During that interim period, such testimony and exhibits shall be maintained as Confidential Material and subject to this Stipulated Protective Order until that period has expired. If designated during a deposition or pretrial proceeding, the party designating portions of the transcript as Confidential Material must direct the court reporter to mark such portion as "Confidential – Subject to Protective Order." If no designation is made by a statement to such effect on the record during the course of the deposition, or within fifteen (15) business days after counsel's receipt of the deposition transcript, the transcript shall be considered not to contain any Confidential Material. Portions of the transcript and exhibits designated as containing Confidential Material may be disclosed in accordance with the terms of this Order.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "Confidential – Subject to Protective Order." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this Order for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
2 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
6 regarding confidential designations without court involvement. Any motion regarding
7 confidential designations or for a protective order must include a certification, in the motion or in
8 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
9 conference with other affected parties in an effort to resolve the dispute without court action. The
10 certification must list the date, manner, and participants to the conference. A good faith effort to
11 confer requires a face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
13 intervention, the party challenging the designation may file and serve a motion under Local Civil
14 Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable) to determine whether the
15 items are in fact subject to this Order. The burden of persuasion in any such motion shall be on
16 the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to
17 harass or impose unnecessary expenses and burdens on other parties) may expose the
18 challenging party to sanctions. All parties shall continue to maintain the material in question as
19 confidential until the court rules otherwise.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as "Confidential Material," that
24 party must:

25 (a) promptly notify the designating party in writing and include a copy of the
26 subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this Order. Such notification shall include a copy of this Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued
5 by the designating party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
8 Material to any person or in any circumstance not authorized under this Order, the receiving
9 party must immediately: (a) notify in writing the designating party of the unauthorized
10 disclosures; (b) use its best efforts to retrieve or destroy all unauthorized copies of the
11 Confidential Material; (c) inform the person or persons to whom unauthorized disclosures were
12 made of all the terms of this Order; and (d) request that such person or persons execute the
13 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order or agreement that provides for production without prior privilege review. Parties shall
21 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

22 10. GENERAL PROVISIONS

23 The confidentiality obligations imposed by this Order shall remain in effect until a
24 designating party agrees otherwise in writing or a Court orders otherwise. Nothing in this Order
25 shall be construed as creating an obligation to disclose information or documents protected by
26 the attorney-client privilege, attorney work product doctrine or other applicable privilege or
27 protections. No party shall be deemed to have waived any objection to the admissibility at trial

1 of any information or documents produced pursuant to this Order. If any Confidential Material
2 is used in any discovery or Court proceeding before trial, it shall not lose its confidential status
3 solely through such use.

4 11. TERMINATION OF ACTION AND DESTRUCTION OF DOCUMENTS

5 Upon the termination of this action by settlement or exhaustion of all appeals, the Parties
6 shall maintain all Confidential Material in their standard storage facility and shall destroy the
7 documents in accordance with their standard record destruction procedures, subject to any
8 applicable litigation hold or any other document or information hold imposed by any
9 governmental body or court order.

10
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 DATED this 6th day of December 2017.

2 By: s/ Bryan C. Graff

3 Bryan C. Graff, WSBA #38553
4 Ryan, Swanson & Cleveland, PLLC
5 1201 Third Avenue, Suite 3400
6 Seattle, WA 98101-3034
7 Telephone: (206) 654-2278
8 Facsimile: (206) 652-2978
9 Email: graff@ryanlaw.com

10 **Carlton Fields Jorden Burt, P.A.**

11 Steven J. Brodie, *pro hac vice*

12 Heidi Hudson Raschke, *pro hac vice*

13 *Attorneys for Plaintiffs/Counterclaim Defendants,*
14 *Allied World Surplus Lines Insurance Company*
15 *F/K/A Darwin Select Insurance Company; and*
16 *Allied World Specialty Insurance Company F/K/A*
17 *Darwin National Assurance Company*

18 By: s/ John R. Neeleman

19 By: s/ Gwendolyn C. Payton

20 John R. Neeleman, WSBA #19752
21 Gwendolyn C. Payton, WSBA #26752
22 Kilpatrick Townsend & Stockton LLP
23 1420 5th Ave., Suite 3700
24 Seattle, WA 98101
25 206-467-9600
26 gpayton@kilpatricktownsend.com
27 jneeleman@kilpatricktownsend.com

Attorneys for Defendant/Counterclaim Plaintiff
Premera

By: s/Eliot Harris

By: s/Rodney Umberger, Jr.

Eliot Harris, WSBA #36590
Rodney Umberger, Jr., WSBA #24948
Williams Kastner & Gibbs PLLC
601 Union Street, Suite 4100
2 Union Square
Seattle, WA 98101
206-628-6600
eharris@williamskastner.com
rumberger@williamskastner.com

By: s/David Boyer

David Boyer, WSBA #9217
D'Amato & Lynch, LLP
Two World Financial Center
New York, NY 10281
212-909-2081
dboyar@damato-lynch.com

D'Amato & Lynch, LLP

Mary Jo Barry, *pro hac vice*

MaryAnn Taylor, *pro hac vice*

*Attorneys for Ironshore Specialty Insurance
Company*

By: s/Jeremy Roland Schulze

By: s/Lawrence Gottlieb

Jeremy Roland Schulze, WSBA #46670
Lawrence Gottlieb, WSBA #20987
Betts Patterson & Mines
701 Pike Street, Suite 1400
Seattle, WA 98101
206-292-9988
jschulze@bpmlaw.com
lgottlieb@bpmlaw.com

Shipman & Goodwin

Alexander R. Karam, *pro hac vice*

Douglas M. Mangel, *pro hac vice*

Attorneys for RLI Insurance Company

By: s/Joseph D. Hampton

Joseph D. Hampton, WSBA #15297
Betts Patterson & Mines
701 Pike Street, Suite 1400
Seattle, WA 98101
206-292-9988
jhampton@bpmlaw.com

Kaufman Borgeest & Ryan LLP

Andrew Oldis, *pro hac vice*
Matthew M. Collibee, *pro hac vice*
Wayne E. Borgeest, *pro hac vice*
Joan Gilbride, *pro hac vice*

*Attorneys for Travelers Casualty and Surety
Company of America*

By: s/Alfred E. Donohue

Alfred E. Donohue, WSBA #32774
Wilson Smith Cochran Dickerson
901 Fifth Avenue, Suite 1700
Seattle, WA 98164
206-623-4100
Donohue@wscd.com

Kerns, Frost & Pearlman, LLC

Marc Pearlman, *pro hac vice*

Attorneys for BCS Insurance Company

By: Everett W. Jack, Jr.

Everett W. Jack, Jr., WSBA #47076
Davis Wright Tremaine LLP
1300 SW 5th Ave
2400 First Interstate Tower
Portland, OR 97201
503-241-2300
everettjack@dwt.com

By: s/Nancy A. Brownstein

Nancy A. Brownstein, WSBA #50150
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
206-622-3150
nancybrownstein@dwt.com

Attorneys for Lexington Insurance Company

By: Robert J. Guite

Robert J. Guite, WSBA #25753
Sheppard Mullin Richter & Hampton
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
415-434-9100
RGuite@sheppardmullin.com

Attorneys for Homeland Insurance Company of New York

By: Jennifer L. Crow

Jennifer L. Crow, WSBA #43746
Scheer Law Group LLP
101 SW Main St, Suite 1600
Portland, OR 97204
503-542-1200
jcrow@scheerlaw.com

Attorneys for RSUI Indemnity Company

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: Dec. 12, 2017


The Honorable Robert S. Lasnik
United States District Judge

1
2 *Presented by:*

3 By: s/Nancy A. Brownstein

4 Nancy A. Brownstein, WSBA #50150

5 Davis Wright Tremaine LLP

6 1201 Third Avenue, Suite 2200

7 Seattle, WA 98101

8 Telephone: (206) 622-3150

9 Facsimile: (206) 757-7700

10 Email: nancybrownstein@dwt.com

EXHIBIT A

Acknowledgment and Agreement to be Bound

I, _____ [print or type full name], of

[print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulation for Protective
Order that was issued by the United States District Court of Western Washington at Seattle on
_____ in the case of *Allied World Surplus Lines Insurance Company, et al. v. Premera*,
No. 2:17-cv-00714-RSL. I agree to comply with and to be bound by all the terms of this
Stipulation for Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
I will not disclose in any manner any information or item that is subject to this Stipulation for
Protective Order to any person or entity except in strict compliance with the provisions of this
Order. I further agree to submit to the jurisdiction of the United States District Court of Western
Washington at Seattle for the purpose of enforcing the terms of this Stipulation for Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____